

SENATE BILL 287

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M1

2003 Regular Session  
(31r0201)

ENROLLED BILL

-- Education, Health, and Environmental Affairs/Environmental Matters --

Introduced by **Senators Frosh, Hooper, Conway, and Pinsky**

Read and Examined by Proofreaders:

\_\_\_\_\_  
Proofreader.

\_\_\_\_\_  
Proofreader.

Sealed with the Great Seal and presented to the Governor, for his approval this  
\_\_\_\_ day of \_\_\_\_\_ at \_\_\_\_\_ o'clock, \_\_\_\_ M.

\_\_\_\_\_  
President.

CHAPTER \_\_\_\_\_

1 AN ACT concerning

2 **Nonnative Aquatic Organisms - State of Nuisance - Abatement and**  
3 **Summary Abatement Procedures**

4 FOR the purpose of authorizing the Secretary of Natural Resources to adopt certain  
5 regulations to prohibit the importation, possession, or introduction of certain  
6 nonnative aquatic organisms; specifying that the provisions of this Act are not  
7 applicable to certain aquaculture operations or activities; authorizing the  
8 Department of Natural Resources to enter and inspect certain property for a  
9 certain purpose and subject to a certain requirement; requiring the Secretary to  
10 consult certain persons and certain resources when making a certain  
11 determination; authorizing the Department to seize and dispose of certain  
12 organisms; requiring the Secretary to serve a certain notice and a certain  
13 abatement order to a certain person in the event of a certain state of nuisance;  
14 authorizing the Secretary to file a certain ~~complaint~~ complaints under certain  
15 circumstances; requiring the Department to reimburse certain costs of abatement  
16 to certain persons and make certain repair efforts under certain circumstances;  
17 authorizing the Department to enter certain property and take certain actions to

1 *abate a state of nuisance*; authorizing the Secretary to abate summarily a  
 2 certain state of nuisance under a certain circumstance; requiring the Secretary  
 3 to serve or attach certain orders under certain circumstances; authorizing the  
 4 Secretary to enter certain property and perform certain work under certain  
 5 circumstances; requiring the Secretary to provide notice of certain charges to a  
 6 certain person, and authorizing the Secretary to file suit under a certain  
 7 circumstance; requiring the Department to minimize certain damage and, under  
 8 a certain circumstance, to repair or reimburse for certain damage; specifying  
 9 that certain persons may not be held civilly liable for certain damages, except  
 10 under a certain circumstance; prohibiting a person from interfering with or  
 11 refusing entry to certain persons; providing for certain penalties; defining  
 12 certain terms; and generally relating to certain procedures for the abatement  
 13 and summary abatement of certain states of nuisance caused by certain  
 14 nonnative aquatic organisms.

15 BY adding to  
 16 Article - Natural Resources  
 17 Section 4-205.1  
 18 Annotated Code of Maryland  
 19 (2000 Replacement Volume and 2002 Supplement)

20 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF  
 21 MARYLAND, That the Laws of Maryland read as follows:

22 **Article - Natural Resources**

23 4-205.1.

24 (A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS  
 25 INDICATED.

26 (2) "AQUATIC ORGANISM" MEANS ~~A FISH OR ANY OTHER ANIMAL~~ AN  
 27 ORGANISM THAT LIVES PART OF ITS LIFE IN WATER.

28 (3) "ECOSYSTEM" MEANS A SYSTEM OF LIVING ORGANISMS AND THEIR  
 29 ENVIRONMENT, EACH INFLUENCING THE LIFE OF THE OTHER AND NECESSARY FOR  
 30 THE MAINTENANCE OF LIFE.

31 (4) "INTRODUCTION INTO STATE WATERS" INCLUDES USE OF AN  
 32 ORGANISM AS BAIT IN THE WATERS OF THE STATE.

33 (5) "NATIVE" MEANS HAVING HISTORICALLY LIVED, GROWN, AND  
 34 REPRODUCED IN STATE WATERS.

35 (6) "NATURALIZED" MEANS DOCUMENTED AS HAVING LIVED, GROWN,  
 36 AND REPRODUCED IN STATE WATERS FOR MORE THAN 10 YEARS WITHOUT KNOWN  
 37 HARM TO THE ECOSYSTEM.

38 (7) "NONNATIVE" MEANS OTHER THAN NATIVE OR NATURALIZED.

1 (8) "NUISANCE ORGANISM" MEANS A NONNATIVE AQUATIC ORGANISM  
2 THAT WILL FORESEEABLY THREATENS TO ALTER ~~ALTER AND THREATEN TO HARM~~  
3 THE ECOSYSTEM OR THE ABUNDANCE AND DIVERSITY OF NATIVE OR NATURALIZED  
4 FISH AND OTHER ORGANISMS.

5 (9) ~~"ORGANISM" MEANS A FAMILY OR LOWER TAXA OF FISH OR ANIMAL.~~

6 ~~(10)~~ "STATE OF NUISANCE" MEANS A CONDITION IN WHICH A NUISANCE  
7 ORGANISM WILL FORESEEABLY THREATENS TO ALTER ~~ALTER AND THREATEN TO~~  
8 HARM THE ECOSYSTEM OR THE ABUNDANCE AND DIVERSITY OF NATIVE OR  
9 NATURALIZED FISH AND OTHER ORGANISMS.

10 (B) (1) EXCEPT AS PROVIDED UNDER PARAGRAPH (2) OF THIS SUBSECTION,  
11 THE SECRETARY MAY ADOPT REGULATIONS TO PROHIBIT THE IMPORTATION,  
12 POSSESSION, OR INTRODUCTION INTO STATE WATERS OF A NONNATIVE AQUATIC  
13 ORGANISM IN ORDER TO PREVENT AN ADVERSE IMPACT ON AN AQUATIC ECOSYSTEM  
14 OR THE PRODUCTIVITY OF STATE WATERS.

15 (2) THE PROVISIONS OF THIS SECTION DO NOT APPLY TO:

16 (I) AN AQUACULTURE OPERATION FOR WHICH THE DEPARTMENT  
17 HAS ISSUED A PERMIT UNDER SUBTITLE 11A OF THIS TITLE; OR

18 (II) THE POSSESSION, IMPORTATION, OR TRANSPORT OF A  
19 NONNATIVE AQUATIC ORGANISM FOR PURPOSES RELATED TO A PERMITTED  
20 AQUACULTURE OPERATION.

21 (C) (1) (I) SUBJECT TO THE REQUIREMENT UNDER SUBPARAGRAPH (II)  
22 OF THIS PARAGRAPH, THE DEPARTMENT MAY ENTER AND INSPECT A PROPERTY TO  
23 DETERMINE WHETHER A STATE OF NUISANCE EXISTS.

24 (II) THE DEPARTMENT SHALL GIVE REASONABLE NOTICE OF AN  
25 INTENT TO ENTER THE PROPERTY OF A LANDOWNER, OCCUPANT, OR TENANT OR  
26 ANY OTHER PERSON REASONABLY BELIEVED TO BE IN POSSESSION OF A NUISANCE  
27 ORGANISM.

28 (2) (I) WHEN MAKING A DETERMINATION REGARDING THE  
29 EXISTENCE, IMMINENCE, AND GRAVITY OF A STATE OF NUISANCE, THE SECRETARY  
30 SHALL CONSULT APPROPRIATE EXPERTS AND ANY OTHER AVAILABLE SCIENTIFIC  
31 RESOURCES.

32 (II) THE DEPARTMENT SHALL INVESTIGATE AND DETERMINE, TO  
33 THE EXTENT POSSIBLE, THE PERSON WHO IS CAUSING OR HAS CAUSED THE STATE  
34 OF NUISANCE.

35 (3) (I) THE DEPARTMENT MAY SEIZE A NUISANCE ORGANISM THAT  
36 HAS CREATED OR WILL FORESEEABLY CREATE A STATE OF NUISANCE.

37 (II) THE DEPARTMENT MAY DISPOSE OF A SEIZED NUISANCE  
38 ORGANISM IN ANY MANNER DEEMED APPROPRIATE.

1 (D) (1) IF THE SECRETARY FINDS THAT A STATE OF NUISANCE EXISTS BUT  
 2 DOES NOT PRESENT AN IMMINENT DANGER TO THE HEALTHY BALANCE OF AN  
 3 ECOSYSTEM, THE SECRETARY SHALL SERVE A WRITTEN NOTICE TO THE PERSON  
 4 ~~WHO IS CAUSING~~ DETERMINED TO HAVE CAUSED THE STATE OF NUISANCE AND  
 5 ORDER THE PERSON TO ABATE THE STATE OF NUISANCE WITHIN A TIME SPECIFIED  
 6 IN THE NOTICE.

7 (2) THE NOTICE SHALL BE SERVED:

8 (I) ON THE PERSON ~~WHO IS CAUSING~~ DETERMINED TO HAVE  
 9 CAUSED THE STATE OF NUISANCE; OR

10 (II) IF THE PERSON ~~WHO IS CAUSING~~ DETERMINED TO HAVE  
 11 CAUSED THE STATE OF NUISANCE CANNOT BE FOUND, ON THE OWNER OR  
 12 OCCUPANT OF THE ~~PROPERTY~~ PROPERTY:

13 1. WHERE THE STATE OF NUISANCE EXISTS; OR

14 2. THAT MUST BE ENTERED TO ACCESS OR ABATE THE  
 15 STATE OF NUISANCE.

16 (3) IF THE PERSON SERVED WITH THE NOTICE UNDER PARAGRAPH (2)(I)  
 17 OF THIS SUBSECTION FAILS TO COMPLY WITH THE REQUIREMENTS OF THE NOTICE  
 18 OR IF THE PERSON COMPLIES BUT THE STATE OF NUISANCE IS LIKELY TO RECUR ON  
 19 THE SAME PROPERTY, THE SECRETARY MAY FILE A COMPLAINT IN THE CIRCUIT  
 20 COURT FOR THE COUNTY WHERE THE STATE OF NUISANCE EXISTS.

21 (4) A COMPLAINT FILED UNDER PARAGRAPH (3) OF THIS SUBSECTION  
 22 MAY SEEK A COURT ORDER REQUIRING THE PERSON ~~SERVED WITH THE NOTICE~~ TO:

23 (I) COMPLY WITH THE REQUIREMENTS OF THE SECRETARY'S  
 24 ABATEMENT NOTICE;

25 (II) ABATE THE STATE OF NUISANCE WITHIN A TIME SPECIFIED IN  
 26 THE ORDER; OR

27 (III) PREVENT THE STATE OF NUISANCE FROM RECURRING.

28 (5) (I) THIS PARAGRAPH APPLIES TO A PERSON SERVED WITH A  
 29 NOTICE UNDER PARAGRAPH (2)(II) OF THIS SUBSECTION.

30 (II) 1. IF THE PERSON VOLUNTARILY ABATES THE STATE OF  
 31 NUISANCE WITHIN THE TIME SPECIFIED IN THE NOTICE, THE DEPARTMENT SHALL  
 32 REIMBURSE ALL REASONABLE COSTS OF ABATEMENT.

33 2. IF THE PERSON CONSENTS, THE DEPARTMENT MAY  
 34 ENTER THE PROPERTY AND, AT THE DEPARTMENT'S EXPENSE, DO ANY WORK AND  
 35 USE ANY MATERIALS NECESSARY TO ABATE THE STATE OF NUISANCE.

1 (III) IF THE PERSON DOES NOT VOLUNTARILY ABATE THE STATE OF  
2 NUISANCE WITHIN THE TIME SPECIFIED IN THE NOTICE AND REFUSES TO ALLOW  
3 THE DEPARTMENT TO ENTER ON THE PROPERTY FOR THE PURPOSE OF ABATING  
4 THE STATE OF NUISANCE, THE SECRETARY MAY FILE A COMPLAINT IN THE CIRCUIT  
5 COURT FOR THE COUNTY WHERE THE STATE OF NUISANCE EXISTS.

6 (IV) A COMPLAINT FILED UNDER SUBPARAGRAPH (III) OF THIS  
7 PARAGRAPH MAY SEEK A COURT ORDER REQUIRING THE PERSON TO ALLOW THE  
8 DEPARTMENT TO:

9 1. ENTER ON THE PROPERTY; AND

10 2. AT THE EXPENSE OF THE DEPARTMENT, DO ANY WORK  
11 AND USE ANY MATERIALS NECESSARY TO ABATE THE STATE OF NUISANCE.

12 (V) IF THE DEPARTMENT ABATES A STATE OF NUISANCE UNDER  
13 THIS PARAGRAPH, THE DEPARTMENT SHALL:

14 1. MAKE REASONABLE EFFORTS TO REPAIR ANY PROPERTY  
15 DAMAGE CAUSED BY ABATEMENT ACTIVITIES; OR

16 2. REIMBURSE THE PERSON FOR REPAIR OR REPLACEMENT  
17 COSTS ASSOCIATED WITH DAMAGES CAUSED BY ABATEMENT ACTIVITIES.

18 (E) (1) IF THE SECRETARY DETERMINES THAT A STATE OF NUISANCE  
19 EXISTS THAT PRESENTS AN IMMINENT DANGER TO THE HEALTHY BALANCE OF AN  
20 ECOSYSTEM, THE SECRETARY MAY SUMMARILY ABATE THE STATE OF NUISANCE.

21 (2) BEFORE SUMMARILY ABATING A STATE OF NUISANCE UNDER THIS  
22 SUBSECTION, THE SECRETARY SHALL, AS APPROPRIATE:

23 (I) IF THE OWNER, TENANT, OR OTHER OCCUPANT OF THE  
24 PROPERTY WHERE THE STATE OF NUISANCE EXISTS IS REASONABLY BELIEVED TO  
25 ~~BE RESPONSIBLE FOR~~ HAVE CAUSED THE STATE OF NUISANCE, SERVE AN  
26 ABATEMENT ORDER ON THE OWNER, TENANT, OR OTHER OCCUPANT;

27 (II) IF THE PROPERTY IS UNOCCUPIED AND THE OWNER CANNOT  
28 BE FOUND, ATTACH AN ABATEMENT ORDER TO THE PROPERTY WHERE THE STATE  
29 OF NUISANCE EXISTS; OR

30 (III) IF A PERSON OTHER THAN THE PROPERTY OWNER, OCCUPANT,  
31 OR TENANT IS REASONABLY BELIEVED TO ~~BE RESPONSIBLE FOR~~ HAVE CAUSED THE  
32 STATE OF NUISANCE:

33 1. SERVE AN ABATEMENT ORDER ON ~~THE~~ THAT PERSON  
34 ~~RESPONSIBLE~~; AND

35 2. A. SERVE A COPY OF THE ABATEMENT ORDER ON THE  
36 OWNER OF THE PROPERTY WHERE THE STATE OF NUISANCE EXISTS OR, IF THE  
37 OWNER CANNOT BE FOUND, ON THE OCCUPANT OR TENANT OF THE PROPERTY; OR

1 B. IF THE PROPERTY IS UNOCCUPIED AND THE OWNER  
2 CANNOT BE FOUND, ATTACH A COPY OF THE ABATEMENT ORDER TO THE PROPERTY  
3 WHERE THE STATE OF NUISANCE EXISTS.

4 (3) (I) AN ABATEMENT ORDER UNDER THIS SUBSECTION SHALL  
5 REQUIRE AND STATE:

6 1. A TIME PERIOD WITHIN WHICH THE PROPERTY OWNER,  
7 OCCUPANT, OR TENANT OR ANY OTHER ~~RESPONSIBLE~~ PERSON DETERMINED TO  
8 HAVE CAUSED THE STATE OF NUISANCE SHALL ABATE THE STATE OF NUISANCE;  
9 AND

10 2. TO THE BEST KNOWLEDGE OF THE DEPARTMENT, THE  
11 WORK AND MATERIALS NECESSARY TO ABATE THE STATE OF NUISANCE.

12 (II) THE TIME PERIOD WITHIN WHICH TO ABATE THE STATE OF  
13 NUISANCE OR TO COMMENCE ABATEMENT, AS WITHIN THE DISCRETION OF THE  
14 SECRETARY, MAY NOT BE LESS THAN 24 HOURS FROM THE DATE AND HOUR THAT  
15 THE ORDER IS SERVED.

16 (4) IF THE PROPERTY OWNER, OCCUPANT, OR TENANT OR ANY OTHER  
17 ~~RESPONSIBLE~~ PERSON SERVED WITH AN ABATEMENT ORDER UNDER THIS  
18 SUBSECTION FAILS TO ABATE OR COMMENCE ABATEMENT OF THE STATE OF  
19 NUISANCE WITHIN THE TIME SPECIFIED IN THE ORDER, THE DEPARTMENT MAY:

20 (I) ENTER ON THE PROPERTY; AND

21 (II) AT THE EXPENSE OF THE PROPERTY OWNER, OCCUPANT, OR  
22 TENANT OR ANY OTHER ~~RESPONSIBLE~~ PERSON DETERMINED TO HAVE WILLFULLY  
23 OR NEGLIGENTLY CAUSED THE STATE OF NUISANCE, DO ANY WORK AND USE ANY  
24 MATERIALS NECESSARY TO ABATE THE STATE OF NUISANCE.

25 (5) (I) 1. AS SOON AS THE TOTAL COST OF ANY ABATEMENT  
26 ACTIVITIES PERFORMED BY THE DEPARTMENT UNDER THIS SUBSECTION HAS BEEN  
27 DETERMINED, THE SECRETARY SHALL PROVIDE A FULL STATEMENT OF CHARGES TO  
28 ANY PERSON DETERMINED TO HAVE WILLFULLY OR NEGLIGENTLY CAUSED THE  
29 STATE OF NUISANCE.

30 2. IF, WITHIN 90 DAYS AFTER THE RECEIPT OF CHARGES THE  
31 PERSON DOES NOT REMIT PAYMENT TO THE SECRETARY, THE SECRETARY MAY FILE  
32 SUIT AGAINST THE PERSON IN THE COUNTY WHERE THE STATE OF NUISANCE WAS  
33 ABATED.

34 (II) 1. TO THE EXTENT POSSIBLE, THE DEPARTMENT SHALL  
35 MINIMIZE PROPERTY DAMAGE DURING ABATEMENT ACTIVITIES.

36 2. IF THE DEPARTMENT HAS NOT DETERMINED THAT THE  
37 PROPERTY OWNER, OCCUPANT, OR TENANT CAUSED THE STATE OF NUISANCE, THE  
38 DEPARTMENT SHALL:

1                    A.     MAKE REASONABLE EFFORTS TO REPAIR ANY PROPERTY  
2 DAMAGE CAUSED BY ABATEMENT ACTIVITIES; OR

3                    B.     REIMBURSE THE OWNER, OCCUPANT, OR TENANT FOR  
4 REPAIR OR REPLACEMENT COSTS ASSOCIATED WITH DAMAGES CAUSED BY  
5 ABATEMENT ACTIVITIES.

6       (F)     ALL ABATEMENT ACTIVITIES SHALL BE PERFORMED IN ACCORDANCE  
7 WITH CRITERIA ESTABLISHED BY THE DEPARTMENT.

8       (G)     ~~(+)     AS SOON AS THE TOTAL COST OF ANY ABATEMENT ACTIVITIES~~  
9 ~~PERFORMED BY THE DEPARTMENT UNDER THIS SECTION HAS BEEN DETERMINED,~~  
10 ~~THE SECRETARY SHALL PROVIDE A FULL STATEMENT OF CHARGES TO ANY PERSON~~  
11 ~~RESPONSIBLE FOR THE STATE OF NUISANCE.~~

12                ~~(2)     IF, WITHIN 90 DAYS AFTER THE RECEIPT OF CHARGES THE~~  
13 ~~RESPONSIBLE PERSON DOES NOT REMIT PAYMENT TO THE SECRETARY, THE~~  
14 ~~SECRETARY MAY FILE SUIT AGAINST THE PERSON IN THE COUNTY WHERE THE~~  
15 ~~STATE OF NUISANCE WAS ABATED AN OWNER, OCCUPANT, OR TENANT OF A~~  
16 ~~PROPERTY ON WHICH THE DEPARTMENT HAS PERFORMED ABATEMENT ACTIVITIES~~  
17 ~~MAY NOT BE HELD CIVILLY LIABLE FOR DAMAGES CLAIMED BY A THIRD PARTY AS A~~  
18 ~~RESULT OF ABATEMENT ACTIVITIES PERFORMED BY THE DEPARTMENT, UNLESS~~  
19 ~~THE OWNER, OCCUPANT, OR TENANT HAS BEEN DETERMINED TO HAVE WILLFULLY~~  
20 ~~OR NEGLIGENTLY CAUSED THE STATE OF NUISANCE.~~

21       (H)     A PERSON MAY NOT:

22                (1)     INTERFERE WITH THE SECRETARY, A REPRESENTATIVE OF THE  
23 SECRETARY, OR ANY OTHER INDIVIDUAL ENGAGED IN THE ABATEMENT OR  
24 SUMMARY ABATEMENT OF A STATE OF NUISANCE UNDER THIS SECTION; OR

25                (2)     REFUSE TO ALLOW THE SECRETARY, A REPRESENTATIVE OF THE  
26 SECRETARY, OR ANY OTHER INDIVIDUAL TO ENTER ON ANY PROPERTY FOR THE  
27 PURPOSE OF ABATING OR SUMMARILY ABATING A STATE OF NUISANCE UNDER THIS  
28 SECTION.

29       (I)     IN ADDITION TO ANY OTHER PENALTY PROVIDED UNDER LAW, A PERSON  
30 WHO VIOLATES A PROVISION OF THIS SECTION IS GUILTY OF A MISDEMEANOR AND  
31 ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 30 DAYS OR A FINE  
32 NOT EXCEEDING \$2,500 OR BOTH.

33       SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
34 June 1, 2003.

